

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

ERVIN LEE MCFERRIN	§	
VS.	§	CIVIL ACTION NO. 1:17-CV-152
PATEL PINKEE, ET AL.	§	

ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Ervin Lee McFerrin, a prisoner confined at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Patel Pinkee, Jeanne Bellanger, Mark Barber, Brendan Dunlap, and Stephen Henderson.

The court ordered that this matter be referred to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends dismissing the action pursuant to for failure to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). Plaintiff contends the defendants were deliberately indifferent to his serious medical needs by failing to refer him to a foot specialist. Plaintiff's disagreement over his treatment does not amount to a constitutional violation. *Stewart v. Murphy*,

174 F.3d 530, 537 (5th Cir. 1999); *Norton v. Dimazana*, 122 F.3d 286, 292 (5th Cir. 1997). Plaintiff has not shown that the defendants were deliberately indifferent to his serious medical needs. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). Plaintiff also alleges the defendants retaliated against him for filing grievances. The retaliation claim does not state a claim upon which relief may be granted because plaintiff did not allege any facts demonstrating that the defendants intended to retaliate against him for exercising a constitutional right. *Morris v. Powell*, 449 F.3d 682, 684 (5th Cir. 2006). Therefore, the Magistrate Judge correctly concluded that this action should be dismissed as frivolous and for failure to state a claim upon which relief may be granted.

### **ORDER**

Accordingly, plaintiff's objections (document no. 25) are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge (document no. 23) is **ADOPTED**. Defendants' motion to dismiss (document no. 15) is **GRANTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendation.

So **ORDERED** and **SIGNED** this 17 day of **July, 2018**.



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Ron Clark, United States District Judge